

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JAMES KENNETH MIZE,

Plaintiff,

vs.

CLARK COUNTY JUSTICE COURT,

Defendants.

Case No. 2:14-cv-01114-JCM-GWF

ORDER

Application to Proceed *in Forma Pauperis* (#4)

This matter comes before the Court on Plaintiff's Application to Proceed *in Forma Pauperis* (#4), filed on July 15, 2014.

BACKGROUND

Plaintiff filed an Application to Proceed *in Forma Pauperis* (#1) on July 8, 2014, which was denied due to Plaintiff's allegations insinuating his ability to pay the fees associated with the cost of bringing his action. *See Dkt. #2*. On July 14, 2014, Plaintiff filed a Supplement (#3) to his Application (#1), therein clarifying his "living cover" due to his "undercover work." *See Dkt. #3*. Plaintiff now brings his Amended Application to Proceed *in Forma Pauperis* (#4).

Plaintiff seeks to proceed *in Forma Pauperis* on his Writ of Prohibition (#1-1) for false arrest and violations of his due process rights. Plaintiff alleges that he was at the Federal Bureau of Investigation ("FBI") in Las Vegas, Nevada, when he was wrongfully arrested after giving his "occidental flashgordon". Plaintiff stated, "[t]he officer had video on his shoulder and admitted he was going to arrest me which is contrary to the occidental's purpose." He alleges that he has a "living cover" and was at the FBI building to get his "occidental to show at a state level since [he] had been having problem [sic] with it during the end of his investigation." He alleges that it is illegal to arrest and search him due to his multi-jurisdictional "occidentals". He alleges authority

1 based on his “Treasury Department occidental tiaspet, Presidential Level occidental chiaspet, State
 2 Department Above the Law” and other occidentals like “unarrested due to them signing my security
 3 clearance at a Director’s level.” Plaintiff brings this action against the Clark County Justice Court
 4 for failing to give him a chance to speak, permitting the illegal search and arrest, and sentencing
 5 him in violation of his right to due process.

6 **DISCUSSION**

7 **I. Application to Proceed In Forma Pauperis**

8 Plaintiff proceeding in this action *pro se*, has requested authority pursuant to 28 U.S.C. §
 9 1915 to proceed *in forma pauperis*. Plaintiff submitted the affidavit required by § 1915(a) showing
 10 an inability to prepay fees and costs or give security therefor. After review of Plaintiff’s
 11 Application to Proceed *in Forma Pauperis*, however, Plaintiff did not include a signed financial
 12 certificate by an authorized officer of the institution in which he is incarcerated as required by 28
 13 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2. The Court therefore is unable to grant Plaintiff’s
 14 request to proceed *in Forma Pauperis* at this time. Furthermore, Plaintiff failed to attach a copy of
 15 his Writ of Prohibition to his amended Application to Proceed *in Forma Pauperis* (#4). Plaintiff is
 16 advised that should he wish to proceed with this action, he must file a copy of his Writ of
 17 Prohibition with a completed, amended Application to Proceed *in Forma Pauperis* pursuant to the
 18 above discussion.

19 **II. Screening the Complaint**

20 Upon granting a request to proceed *in forma pauperis*, a court must additionally screen a
 21 complaint pursuant to 28 U.S.C. § 1915(e). Though the Court did not grant Plaintiff’s Application
 22 to Proceed *in Forma Pauperis*, the Court will proceed to screen Plaintiff’s Writ of Prohibition (#1-
 23 1) attached to his original Application to Proceed *in Forma Pauperis* (#1) for informational
 24 purposes should Plaintiff wish to pursue this action.

25 **1. Writ of Prohibition**

26 A writ of prohibition is an extraordinary writ issued by an appellate court to prevent a lower
 27 court from exceeding its jurisdiction or to prevent a nonjudicial officer or entity from exercising a
 28 power. *See* Black’s Law Dictionary 1248, (8th ed. 2004). A writ of prohibition should not issue

1 unless it “clearly appears that the inferior court is about to exceed its jurisdiction.” *See Smith v.*
 2 *Whitney*, 116 U.S. 167, 176 (1886). A writ of prohibition is a drastic remedy that should be granted
 3 only when the petitioner’s right to the requested relief is clear and indisputable. *See In re Vargas*,
 4 723 F.2d 1461, 1468 (10th Cir. 1983); *see also In re Missouri*, 664 F.2d 178, 180 (8th Cir. 1981).
 5 Further, a writ of prohibition should be granted only when the petitioner has no other adequate
 6 means of relief and may not be used as a substitute for the normal appellate process. *See In re*
 7 *Banker’s Trust Co.*, 775 F.2d 545, 547 (3d Cir. 1985); *see also Missouri*, 664 F.2d at 180.

8 To the extent that the Plaintiff is attempting to challenge the validity of his state court
 9 judgment of conviction and sentence, this challenge is improperly raised in the instant petition for a
 10 writ of prohibition. *See* N.R.S. 34.724(2)(b); *see also* N.R.S. 34.170; *see also* N.R.S. 34.330. The
 11 Plaintiff failed to demonstrate that a due process violation or the rule of leniency required
 12 extraordinary relief. Furthermore, Plaintiff has an adequate remedy to judicially pursue his claim
 13 pursuant to N.R.S. 34.724(2)(b) and 28 U.S.C. § 2254. Accordingly,

14 **IT IS HEREBY ORDERED** that Plaintiff’s Application to Proceed *In Forma Pauperis*
 15 (#4) is **denied** without prejudice

16 **IT IS FURTHER ORDERED** that Plaintiff shall have until **August 25, 2014** to file a new
 17 Application to Proceed *in Forma Pauperis*, accompanied by a signed and executed financial
 18 certificate and Plaintiff’s Complaint, or make the necessary arrangements to pay the filing fee.
 19 Plaintiff is advised that failing to do so may result in the dismissal of his case.

20 **IT IS FURTHER ORDERED** that the Clerk of the Court shall send Plaintiff a blank
 21 Application to Proceed *in Forma Pauperis* for incarcerated litigants.

22 DATED this 25th day of July, 2014.

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 25 GEORGE FOLEY, JR.
 26 United States Magistrate Judge
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